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STATE DOCUMENTS

Governor's Message

STATE OF MONTANA.

JANUARY. 1891.

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MESSAGE

OF

GOVERNOR JOSEPH K. TOOLE

TO THE

SECOND LEGISLATIVE ASSEMBLY

OF THE

STATE OF MONTANA

JANUARY 5, 1891

The Governor's Message.

GENTLEMEN OF THE LEGISLATIVE ASSEMBLY:

Obedient to that provision of the constitution which requires me, at the beginning of each session, to give to the Legislative Assembly, information of the condition of the state and to make such recommendation as deemed expedient, I have the honor to submit for your consideration the following message:

The year which has just closed finds us in a flourishing condition. Mining, Stock raising and agriculture, the three industries in which we are conspicuously successful, have made rapid strides in development. Great irrigating enterprises are on foot by which our fertile soil will be made to respond in a greatly increased measure. Our oft asserted claim for the capacity of our soil to produce the best and most prolific yield of wheat, oats and barley has been fully established and maintained.

Our great and diversified resources, by which we are self-supporting, have made us virtually independent of the financial stress which has lately oppressed with disastrous effects less favored communities.

A brief reference to official data furnished this office justifies the following comparative statement.

A year ago our total assessment was	$ 79,376,944
Now it is (see exhibit "A")	112,457,555
A year ago our mineral output was	24,012,000
Now it is	47,848,000
A year ago the number of horses, sheep and cattle in Montana was	1,881,268
Now it is	2,368,482
A year ago the number of bushels of wheat, oats and barley produced was	2,648,149
Now it is	4,111,907
A year ago the numbei of pounds of wool produced was	7,023,134
Now it is	7,784,007
A year ago the number of quarts mills and reduction furnaces operated was	188
Now it is	207
A year ago the number of bushels of coal mined was	907,500
Now it is (629,200) tons	17,612,000
A year ago the number of miles of completed railroad was	2,043
Now we have	2,365
A year ago we collected in revenue from all sources	$149,316 70
This year we collected	309,429 23
We have paid out since November 8, 1889	193,437 99
Unpaid claims against the state requiring appropriations (approximated)	167,819 95
Money in treasury December 31, 1890	187.181 49

A table showing net indebtedness of the several counties up to March 1, 1890, and increase or decrease for the year ending Feb. 28, 1890, is hereto appended marked "Exhibit B;" also a table showing the condition of the several funds and the amounts contributed to each by the several counties is marked "Exhibit C."

This remarkable march of progress, when augmented by federal legislation looking to the reclaimation of our arid lands and the increase of the circulating medium which will follow the free and unlimited coinage of silver, will reach a point far beyond the expectations of the most sanguine.

But our great resources and almost limitless possibilities should not tempt us into improvident expenditures of the people's money. Against this the constitution stands as an insuperable barrier. Sec. 12 of Art. 12, of the constitution is important at the outset.

Sec 12. No appropriation shall be made or any expenditures authorized by the legislative assembly whereby the expenditures of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislative assembly making such appropriation shall provide for levying a sufficient tax, not exceeding the rate allowed in section nine (9) of this article, to pay such appropriation or expenditures within such fiscal year. This provision shall not apply to appropriations or expenditures to suppres insurrection, defend the state, or assist

in defending the United States in time of war. No appropriation of public moneys shall be made for a longer term than two years.

Considerable difficulty has at times been experienced in carrying on the necessary affairs of state which will be spoken of hereafter under appropriate headings. This has resulted from a want of the necessary legislation to put constitutional provisions into effect and to meet many new conditions which have arisen on account of the change from territorial to state governments, but upon the whole we have succeeded fairly well. The prospect for the future is inviting and the wholesome restraints of our constitution above referred to are safe guarantees against incurring indebtedness beyond our ability to pay.

STATE LEVY.

One of the first acts which you will be called upon to perform will be under Sec. 1, Art. 12, of the constitution requiring you to "levy a uniform rate of assessment and taxation." Sec. 9 of the same article is as follows:

Sec. 9. The rate of taxation of real and personal property for state purposes in any one year shall never exceed three (3) mills on each dollar of valuation; and whenever the taxable property in the state shall amount to one hundred million dollars ($100,000,000), the rate shall not exceed two and one-half mills on each dollar of valuation; and whenever the taxable property in the state shall amount to three hundred million dollars ($300,000,000), the rate shall never exceed one and one-half mills on each dollar of valuation; unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

Our demands will require the largest levy permissible under the constitution, to-wit, two and one-half mills.

THE PENETENTIARY.

The penetentiary, formerly belonging to and under control of the United States, has now become the property of the state. The same, with the lands connected therewith, were granted to the state by the act providing for our admission into the union. Under our territorial organization, the control and management of this institution was under the exclusive jurisdiction of the United States, with whom the territory contracted for the maintenance and support of its prisoners. In providing for the change from territorial to state government, no provision was made to cover the period between the date of admission and the time

when the legislature should provide for the proper management of the same. Between that date, however, and the 1st day of March, 1890, the United States marshal remained in charge under the contract between the territory and the United States. On the latter date I found the United States no longer willing to continue in charge. With no appropriation available to maintain the institution and no law under which to act I was left to my own resources in the matter. I accordingly contracted with Mr. Frank Conley and Thomas McTague, of Deer Lodge city, Montana, for the care, custody and maintenance of the institution and inmates (subject to the ratification of the legislative assembly), at the rate of seventy cents per day per capita for all over one hundred, and sixty-five cents per capita for all over two hundred.

The price paid the United States by the territory was 85 cents per capita. The performance of this contract was secured by a bond of $50.000. The contractors have, I believe, faithfully performed their part of the contract. They have trusted entirely to the good faith and ability of the state to reimburse them and I earnestly hope this may be done without delay. Independent of the value of improvements made by the contractors, for which reasonable compensation should be made, there is now due to them the sum of $44,901,90.

How shall the prison be managed in the future? Shall a warden be appointed and appropriations made direct to maintain it under state control and supervision, or will the contract system be continued? These are questions submitted to your sound judgment.

So far as the mere cost to the State is concerned, I am inclined to believe that the contract system, under such rules and regulations as the Board of Prison managers might make, would be more advantageous to the State. Whatever conclusion is reached in that connection it is absolutely necessary that considerable improvements should be made in the prison and the grounds.

The dictates of humanity and a decent regard for the health and possible reformation of the inmates demand more commodious quarters and such an arrangement that young offenders may not be compelled to be incarcerated with the chronic and more vicious criminals. The capacity of the penitentiary is about 140 men. Whole number confined January 1, 1891, 240. During the year past seventy-nine were released, two by pardon, seventy by expiration of sentence, two delivered for new trials

and five by death. Of the number confined to December, 1890, the sex and color were as follows:

White males	217
White females	8
Colored males	6
Colored females	1
Indians	8
Chinese	7
Total	242

The crimes for which they were convicted embrace: Murder, robbery, attempted rape, assault with deadly weapon, assault to do bodily harm, assault to commit burglary, burglary, breaking jail, crime against nature, embezzlement, forgery, larceny, manslaughter, assault to commit murder, obtaining valuable papers under false pretenses, obtaining money under false pretenses, perjury, resisting officer, receiving stolen property, assault to commit robbery, sodomy, and the terms of punishment range from one year to life. Of the latter there are sixteen; 184 were citizens of the United States and fifty-eight were foreigners. Counties sent from:

Beaverhead	13
Cascade	12
Choteau	19
Custer	11
Deer Lodge	24
Dawson	2
Fergus	9
Gallatin	9
Jefferson	5
Lewis and Clarke	40
Madison	3
Meagher	5
Missoula	19
Park	17
Silver Bow	47
Yellowstone	7
Total	242

The first annual report of the contractors will be hereafter placed before you.

INSANE.

The insane of the State are supported under contract between the Territory of Montana and Doctors Mitchell and Mussigbrod, at Warm Springs, Deer Lodge county, Montana, at $8 per week, making an expense to the State of about $75,000 per annum. The number is increasing rapidly, the last report showing 200 patients maintained at public expense. The maintenance of the insane and the penitentiary will form the largest items of expense under our state government. The proper treatment o

those unfortunates committed to the asylum at the least possible expense to the State, calls for the exercise of your best judgment. I am not prepared at this time to say that any new arrangement would be advantageous to the State, or to the person confined therein, but in view of the great and growing expense in that behalf, I urge the most thorough investigation of the subject. The contractors have received nothing from the State in payment under their contract since January 8, 1890. There is consequently due them the sum of $77,380.61. This looks like a great hardship to impose upon the contractors, who claim to be payng interest upon the amount in order to maintain this institution. The situation calls for prompt action. I invite attention to the annual report of the contractors in this connection which will be hereafter transmitted.

OTHER UNFORTUNATES SUPPORTED BY THE STATE.

The State is now supporting and educating five deaf and dumb children at public institutes. Three at Washington, D. C., one at Danville, Ky., and one at Baltimore, Md.; also one blind child at Nashville, Tenn. We also support five feeble-minded children; two of the latter are at Binghampton, N. Y , and three at Elwin, Pa. Each of the children is costing the State an average of $300 per annum, besides transportation going and returning.

Of this number two have been sent within the past year. Contracts for their keeping have been entered into for from one to six years, according to the age of the child. These facts are submitted in the hope that they may become the basis for intelligent consideration of the claims which these unfortunates have upon the State and humanity.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

I have already referred to the penitentiary at Deer Lodge. Aside from this there is no other public building belonging to the State except the armory at the State Capital. On the 22nd day of October, A. D. 1889, Hon. B. F. White, late governor of Montana Territory, on behalf of the Territory, entered into a contract with one A. McCarter for the erection of a state armory for the contract price of $13,300, besides such extra work as the contractors aad architects might agree upon. The work was not completed at the time of the change from the territorial to the State government. Work, however, continued and the building was completed and is now occupied for the purpose intended. Its completion found us in debt to the contractors on account of balance due in the sum of $5,591.75.

There was no authority of law to pay it out of money in the State treasury. The demand for the building was as urgent as the demand by the contractor for his money. A number of the public-spirited gentlemen of the capital came to the rescue, endorsed the note of the State officers upon which the Cruse Savings Bank of Helena advanced the money to pay off the contractor. This note, with the interest is still due and will be brought to your attention in connection with other unpaid claims against the State.

In connection with the use of the building as an armory the same is occupied by several companies of the National guard of Montana under an arrangement by which each company is to pay an annual rental of $300 out of the money allowed by law to the several companies, but which in the absence of necessary legislation they have been unable to draw. The building has been insured in three companies for the sum of $15,000. There was no money available to pay this and the several agents of these companies are generously carrying the State for the premiums pending authority to pay the same. The companies of the National guard in Helena have, by their combined efforts, raised several hundred dollars which have been expended in necessary work to make the building inhabitable. Upon the whole I may add that public generosity has been taxed to the utmost to utilize the armory, all of which has been made necessary on account of a failure to properly provide by legislation for its completion and maintenance.

OTHER BUILDINGS.

Provision is made by Sec. 1, of Art. 10, of the Constitution, for the establishment and support by the State of educational, reformatory and penal institutions, and those for the benefit of the insane, blind, deaf and dumb, soldiers' home and such other institutions as the public good may require.

While the establishment of these institutions is made mandatory by the constitutton, no time is fixed when legislative action shall be taken. In view of the limitation placed by the constitution upon the public expenditure I hope no effort will be made at this session to provide for the construction of such buildings. It would be wise, however, if the location of these institutions should be the subject of early consideration and settlement. The longer that is delayed the greater will be the struggle between aspiring sections of the State for recognition in that behalf, and pending such contention, the interests of good legislation may be subordinated if not wholly ignored. In this connection it is proper to call your attention to the fact that legislation will be required to give force to Sec. 2, Art. 10, of the Constitution, providing

for the permanent location of the seat of government; the manner of submission, the manner of canvassing the votes and the details generally should be provided for.

STATE MILITIA.

Sec. 3, Art. 14, of the Constitution makes it incumbent upon the State to maintain the militia by appropriations from the State treasury. In view of this provision it becomes a question of great concern how to maintain this organization so as to preserve its efficiency in case of danger and at the same time reduce the expense to the minimum. All extraordinary and unnecessary expenses should be discontinued and eliminated from the law. It is obvious that with the many demands made npon the State treasury, consequent upon a change of government, the practice of the most rigid economy in every department is imperative. In appropriating money for this as well as all other institutions of the State, we must keep constantly in view that provision of the Constitution prohibiting the passage of an appropriation or the issuance of any warrant beyond the amount raised by taxation. In other words our Constitution was framed upon the principle of administering our affairs upon a cash basis, except when the proposition to raise a tax is submitted to the people at a general election. Our revenue will be insufficient to maintain a militia upon the scale provided in the present military code. It is claimed by many that one half of the number of companies properly disciplined and well provided for would be more serviceable and creditable to the State than the entire militia as now organized. It is also claimed that the annual encampment now provided for might be well abandoned without detriment to the service and a system of inspection instituted in lieu thereof.

These items alone would result in a saving of about $20,000 per annum.

Upon these questions there is a difference of opinion among the staff, regimental and other officers of the National guard, but all who have expressed an opinion agree that expenses should be reduced. I accordingly recommend an organization upon a less expensive plan until the resources of the State will justify a more comprehensive one. I think the governor should have authority to issue arms to settlers in remote places in case of threatened danger. It cannot be done now without making himself personally responsible for loss of property.

STATE OFFICERS.

Such of the State officers as are required to reside at the seat of the government are quartered at the court house, where reasonably good accommodations are provided for most of them.

No provision of law exists by which any officer is permitted to contract for the renting or leasing of offices. The county commissioners of Lewis and Clarke county, relying upon the State to ratify the actions of the occupants, have furnished and delivered the possession of offices to the following persons: Governor, secretary of state, auditor, treasurer, attorney general, superintendent of public instruction and judges of the supreme court. So far as I am informed the quarters furnished are well adapted to such uses and reasonably satisfactory. We have paid no rent to the county, although we have occupied the rooms for more than a year. I recommend that authority be given some officer of this State to enter into a proper contract for quarters and that provision be made to pay the same.

Your attention is also called to the fact that there is no law in existence by which the vote for State officers to be elected in 1892 can be canvassed or the result of the election declared.

The State Constitution provided the method of giving effect to the first election only. The necessity of legislation upon this question is urgent. The term of office of the present incumbents expires on the first day of January, 1893, and does not continue, as is usual, until their successors are elected and qualified.

REPORTS OF STATE OFFICERS.

Sec. 19, of Art. 7, of the Constitution requires all State officers to make a full and complete report of their official transactions to the Governer at least twenty days preceding each regular session of the Legislative Assembly, which report is thereafter to be transmitted to the legislature by the governor. In order to make this report available and of practical value so far as the financial condition of the State is concerned, it will be necessary to change the present law and make all taxes delinquent after the 30th day of November instead of December 31st and I recommend the change, and I further recommend as a matter of convenience and economy that all reports of State officers required to be printed, be printed in one volume.

GREAT SEAL OF THE STATE.

We are still using the old seal of the Territory. A State seal should be adopted. Also a seal for the Supreme Court.

STATE BOARD OF EQUALIZATION.

The creation of this Board is a radical departure from former methods in this State.

Sections 15, 16 and 18, of Art. 12, of the Constitution are as follows:

SEC. 15. The Governor, secretary of State, State treasurer, State auditor and attorney general shall constitute a State Board of Equalization and the board of county commissioners of each county shall constitute a County Board of Equalization. The duty of the State Board of Equalization shall be to adjust and equalize the valuation of the taxable property among the several counties of the State. The duty of the County Board of Equalization shall be to adjust and equalize the valuation of the taxable property within their respective counties. Each Board shall also perform such other duties as may be prescribed by law.

SEC. 16. All property shall be assessed in the manner prescribed by law except as is otherwise provided in this Constitution. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in more than one county in this State shall be assessed by the State Board of Equalization and the same shall be apportioned to the counties, cities, towns, townships and school districts in which such railroads are located in proportion to the number of miles of railway laid in such counties, cities, towns, townships and school districts.

SEC. 18. The legislative assembly shall pass laws necessary to carry out the provisions of this article.

Pursuant to these provisions the Board organized and proceeded to a discharge of its duties. An examination of the authorities soon satisfied the Board that the foregoing provisions were inoperative without the necessary legislation. It proceeded, however, basing its action in nearly every instance upon an agreement with the railroad companies by which the assessments were made and the taxes paid.

The labor involved in securing the necessary information, preparing the proper blanks, together with travel, conference and correspondence has been great; and all done and performed under great difficulties.

The whole subject has been thoroughly considered and legislation recommended by the Board of Equalization in its first annual report which has been printed and which will be hereafter submitted. I will not, therefor, encumber this message with them but fully endorse the report and recommend the legislation proposed as proper and necessary.

BOARD OF PARDONS.

The Constitution has provided for a Board of Pardons consisting of the secretary of State, State auditor, and attorney general.

No legislation has ever been enacted providing for the time or place of its meetings or defining its procedure in any respect.

The Board, however, deeming it had sufficient authority so to do organized and have proceeded to act upon various cases passed on by the executive, making its own rules, etc., etc. These rules or similar ones should be enacted as law or direct authority conferred upon the Board to make the same.

During the year twenty-nine applications for pardon were presented to me. Out of this number twenty-two were rejected by me; five were granted and two commuted. These latter cases went before the Board of Pardons for its action, which resulted in the approval of five and disapproval of two.

The report of the Board showing its organization, rules of procedure, cases considered and other information in detail will be hereafter presented.

The present system of pardons is a radical departure from that which has existed since our organization as a territory; yet nothing has come under my observation to subject it to criticism.

STATE BOARD OF EDUCATION.

Section 11, Art. 11 of the Constitution is as follows:

SEC. 11—The general control and supervision of the State university and the various other State educational institutions shall be vested in a State Board of Education, whose powers and duties shall be prescribed and regulated by law. The said Board shall consist of eleven members, the governor, State superintendent of public instruction and attorney general being members ex-officio; the other eight members thereof shall be appointed by the governor, subject to the confimation of the Senate, under the regulations and restrictions to be provided by law.

This section evidently contemplates that legislation shall be passed defining the term of office, qualification, etc., of the Board. I would suggest that in formulating the law provision should be made for the expiration of one term every year, which would secure the service of experienced men at all times on the Board.

STATE BOARD OF EXAMINERS AND PRISON COMMISSIONERS.

Section 20, Art. 7, of the Constitution, is as follows:

SEC. 20—The governor, secretary of State and attorney general shall constitute a Board of State Prison Commissioners, which Board shall have such supervision of all matters connected with the State prisons as may be prescribed by law. They shall constitute a Board of Examiners with power to examine all claims against the State, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the State except for salaries and

compensation of officers as fixed by law, shall be passed upon by the legislative assembly without first having been considered and acted upon by said Board.

The powers, procedure and duties of the Board should be prescribed by law. The numerous claims filed against the State have not been examined or passed upon by the Board of Examiners, nor has anything been done by the Board of Prison Commissioners except to organize, visit and inspect the penitentiary with a view of ascertaining the manner in which it was conducted and what additions and repairs should be made thereto. A separate report upon that proposition will be hereafter submitted.

LABOR.

Provision is made in the Constitution for a Bureau of Labor and Industry, to be located at the capital, and to be under the control of a commissioner to be appointed by the governor, and subject to confirmation by the senate. I regard the creation of this office as of the greatest importance to the State. It will be the medium through which can be collected and preserved authentic statistics and information generally of great value in the adjustment and perfection of future legislation. While our population is small and our industries comparatively few, the salary should be moderate.

PUBLIC EXAMINER.

Section 8, Art. 7, of the Constitution makes it your duty to provide for a State Examiner, and in addition to the duties specifically enjoined upon that official by the Constitution, he is required to perform such other duties as the legislature may prescribe. His compensation should be fixed by law.

APPORTIONMENT AND REPRESENTATION.

Section 2, Art. 6, of the Constitution provides as follows:

SEC. 2—The legislatve assembly shall provide by law for an enumeration of the inhabitants of the State in the year 1895 and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for representatives on the basis of such enumeration according to ratios to be fixed by law. From this it appears that the present legislature will be called upon to revise and adjust the apportionment for Representives, and in so doing they are required to take as a basis the enumeration last made by the United States, an enumeration, which, so far as this State

is concerned, was a complete and elaborate failure. It will furnish the basis for an unjust apportionment which must be tolerated until after 1895, when an enumeration may be made by the State as provided by section 2, above referred to, if legislation to that end is enacted.

COMPENSATION OF MEMBERS OF THE LEGISLATURE.

In view of the fact that the Constitution has declared that the compensation of the legislative assembly after the first shall be as provided by law, and that no legislative assembly shall fix its own compensation, it will be incumbent on you to give this subject attention at this session.

PUBLIC LANDS.

The act providing for our admission into the Union grants to the State public lands, which, if properly selected, managed and controlled, will place Montana second to no State in the Union in respect of educational and other institutions for which the grant was intended. It is therefore of the highest concern to the people that speedy legislative action should be had providing for the early selection of these lands. Every day that passes lessens the value of the grant by affording opportunity for individuals to initiate settlements and rights under the land laws of the United States which will be superior to ours until the selections are made. In this connection we should not be unmindful of the fact that suits are pending and legislation is being urged for the purpose of dispossessing the Northern Pacific railroad company of thousands of acres of mineral land within this State claimed under its grant, and that for every acre so taken it will claim an equivalent of agricultural land. A bare suggestion of this subject is sufficient to stimulate our efforts in securing an early selection of the land granted to the State, otherwise the gift of the government may not be worth the taking. I call your attention to section 10 of the enabling act referred to, and other sections of the same act relating to the same subject. Sect. 1, Art. 18, of the Constitution seems to contemplate the creation of a board of land commissioners, whose duty it shall be to classify all public lands. It appears to me that this board should be charged with the duty of making the selections provided for in section 10 of the enabling act above referred to. In any provision you make for the sale or leasing of public lands belonging to the State, preference should be given to actual settlers, who in good faith located upon school sections by mistake, or who believing such preference would be given, have made valuable improvements upon the same.

These two classes of persons should be protected; the former for the reason that the failure of the general government to extend the public surveys, made it impossible in many cases to distinguish a school section from any other section, and the latter for the reason that the constitution adopted and ratified by the people in 1884, contained a provision similar to the recommendation above made, and upon which numerous persons have relied and made settlement accordingly.

If the federal government or the State shall ultimately aid in the establishment of a system of irrigation and the storage of water by means of reservoirs, no man can approximate the value of these lands to the State in the future. I make this observation to guard you against the demands of those who, eager to monopolize our lands, will doubtless be on hand to urge a hasty and inconsiderate disposition thereof.

Section 13 of the enabling act provides:

SEC. 13—That five per centum of the proceeds of the sale of public lands lying within said States which shall be sold by the United States subsequent to the admission of said States into the Union, after deducting all the expenses incident to the same shall be paid to the said States, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said States respectively.

This fund, whatever it may be, should be placed to our credit so that it may be invested and return some revenue to the State. Legislation to authorize its investment must, however, be first provided.

Congress has been well disposed in advancing educational interests, and it remains for us to avail ourselves of its munificence.

AGRICULTURAL COLLEGE.

By an act of Congress approved August 30, 1890, $15,000 per annum and an increase of $1,000 per aunum for the period of ten years thereafter is appropriated to each State and Territory, and after that the sum of $25,000 per annum to be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematical, physical, natural and economic science. In order to avail ourselves of this appropriation an Agricultural College must be established in accordance with an act of Congress approved July 2, 1862. The Legislative Assembly must assent to the purpose of said grant and provide to whom the payments of above mentioned appropriations shall be made. I earnestly urge that action looking to this very desirable end may be speedily taken. These suggestions tend naturally to a consideration of some

method looking to the protection of the several grants from the government for educational and other purposes.

Many of our lands donated to the State for the support of common schools, being sections sixteen and thirty-six in every township, as well as university lands already selected, are endangered by trespassers and individuals asserting claims under the mineral land laws. Many of these lands are very valuable on account of their proximity to cities and towns; and this is doubtless the incentive in a majority of cases for jumping the same.

The result is that contests are now pending in the local land offices and the general land office at Washington involving our rights to school lands. Other cases of flagrant trespass in which lands are being occupied and despoiled have come to my knowledge but have not reached the land office or the courts. We have been virtually powerless in the absence of legislation to protect these sacred interests. It seems little less than a crime to see this splendid heritage passing away from us and falling into the hands of sordid and selfish individuals who take no account of the rights of the State. I think that a fund should be placed at the disposal of the Board of Land Commissioners for the payment of all necessary expenses of examination, survey and of contested cases involving the title or right of possession of school or other lands granted to the State. There should also be a State agent who should be empowered to represent our interests here and before the department at Washington. I commit the whole subject to your wisdom, profoundly conscious of the fact that no graver question will engage your attention.

RAILROAD GRANTS AND MINERAL LANDS.

The State has a direct interest in the speedy and final settlement of all questions affecting the grant of the Northern Pacific railroad company within our limits. First, we are vitally interested in upholding the spirit and purpose of the grant, which reserved all mineral land from its operation. These lands should always be open to exploration and development by the prospector and miner. The policy of the federal government has always run in that direction in an unbroken line, as evidenced by every public grant.

Second, it is of paramount importance to us to secure an early survey of such lands as the railroad company is entitled to under the law in order that this immense grant may be subjected to taxation like other property within the State.

It cannot be taxed before it is surveyed. The longer this indispensable condition is delayed, greater will be our misfor-

tune in a financial point of view and greater will be the complications arising out of it.

It requires only a casual glance at the situation to see that for every legal subdivision claimed by the company which by decision of a competent tribunal shall be declared to be mineral, another section will be claimed in lieu thereof. Titles will be clandered, confusion generally will exist, and expensive litigation will follow.

It seems proper, therefore, that congress should be memorialized to take such steps as it may seem to you just and expedient to designate and protect the mineral lands falling within the limits of the grant, and speedily to survey and designate all lands to which the railroad company is entitled, so that the same may be made to respond to their just proportion of the public burdens. In this connection I consider it proper to recommend for your investigation the question of the liability of the right of way of the Northern Pacific Railroad Company within this State to taxation.

Several propositions are involved. First, whether the clause of their charter exempting the right of way "within the Territories" is not destroyed by the creation of a State out of such Territory.

Second, does not the act admitting us a State "upon an equal footing with the original States" operate protanto as a modification of the exemption clause of the charter? No such embargo was laid upon "the original States."

Third, does the provision of the charter providing for "modification," etc., contemplate such a modification as this?

Fourth, if it does and the creation of the State "upon an equal footing with the original states" is not tantamount to such a modification, would it not be well to direct the attention of our Senators and Representatives in Congress to the necessity of legislation to that end? It has come to my knowledge that the railroad companies maintain that this exemption is still in force.

DESERT LANDS AND IRRIGATION.

Every person who is conversant with our climate and the character of our soil must know that great possibilities await a general and comprehensive system of irrigation of our lands. I do not think the public is interested in holding a vast empire as a mere cattle range for large herds of stock. Upon the contrary it will be a glad day for Montana when the stock interests of the State shall be divided among the ranchmen in small lots. This will insure their proper feeding and shelter, and furnish employment to a large number of persons who must also be provided with the necessaries of life, all of which will be conductive of a more general prosperity to the State.

The proper solution of this question is pregnant with great import to the people of this State. There was a time when it seemed not improbable that the general government would take hold of this proposition and under its supervision control and manage the water supply to the advantage of all. It is perfectly apparent, however, at this time that influences are co-operating which will eventuate in destroying whatever hope we may have had in that direction. Eastern communities which have set this opposition in motion, appear to be mindful only of local interests and not of the prosperity of the whole country. Their protest is based upon the claim that the reclamation of these arid lands would subject the settler in the eastern and middle states to undue competition, retarding relief from agricultural depression. They will not, but they should remember that "this depression, arising from the competition of more favored conditions, is a portion of our inheritance and of the inalienable sacrifice exacted from mankind by that modern Juggernaut, Progress, whose wheels take no backward turn, however loud, however real, or however pitiful the outcries of the victims may be."

The homes which we propose to make are not for us alone, but for every citizen of the United States who has the courage to come and take one. We are interested in having this country settled and contribute something more to humanity and the world. There is no citizenship like that which is bound to the State and the Nation by a title in fee to the soil. Of course these lands, when reclaimed, will come in competition with that immense land grant of over twenty millions of acres almost wholly undisposed of in our State and possibly depreciate its value, but that is only another reason for their speedy reclamation, as it will secure cheap homes for the people and in the end benefit all. If we are to receive any substantial or speedy benefits from our arid lands I believe the State must first acquire a title to them and then undertake by appropriate legislation to reclaim and dispose of them. The Government should select, survey and convey these lands to the State upon such conditions as would secure their occupation and reclamation.

The West has contributed largely to building up the great revenues of the Nation and has received very slight corresponding benefits. It is not, however, the section, but the subject to be fostered and encouraged.

Agriculture lies at the foundation of our national prosperity. It is already languishing under the fatal pressure of unjust discrimination. It should be stimulated and promoted; not, however, by circumscribing its area or diminishing the amount of its production, but the remedy lies in opening and extending by appro-

priate legislation our commercial relations with those countries which afford the most profitable markets for our products.

I think our demands upon this subject should be formulated and transmitted to congress.

INDIANS AND INDIAN RESERVATIONS.

The large Indian reservations within our borders which were set aside by the general government, embrace some of our best agricultural lands and are far in excess of the requirements of the Indians, who are no longer able or compelled to live by the chase, but in every instance are the recipients of bounty from the government. The buffalo and wild game which once abounded upon these great reservations are practically extinct, and with their departure disappeared the only reason for the maintenance of large areas of land for the occupancy of the Indians.

I therefore hope that you will memorialize congress to compel a speedy selection and acceptance of these lands by individual members of Indian tribes, the destruction of tribal relations, and for an early restoration of the remainder of said lands to the public domain.

Although there has been visible unrest among several tribes within the State happily no serious outbreak has occurred within the last year. The only threatened danger grew out of the killing of a citizen and the indiscriminate slaughter of range cattle by the Cheyenne Indians in Eastern Montana last spring. The circumstances in this instance seemed to be of such importance as to justify sending a special messenger to the scene of the difficulty with instructions to investigate and report concerning the causes and probable consequences of the affair. Colonel C. D. Curtis, aide de camp N. G. M. was accordingly detailed for the purpose and after conferring with the officers of the United States Army at Fort Keogh proceeded to take the testimony of reliable and trustworthy citizens respecting the same, which was embodied in his report to the Executive Office and which will be hereafter transmitted. An authenticated copy of this report was forwarded to the Interior Department at Washington with the accompanying letter which probably through the carelessness of some subordinate was never acknowledged.

STATE OF MONTANA, EXECUTIVE OFFICE,
HELENA, Montana, July 3, 1890.

To the Secretary of the Interior, Washington, D. C.;

SIR: I have the honor to call your attention to recent depredations of the Cheyenne Indians in Eastern Montana which resulted in the death of one citizen and the slaughtering of numerous cattle upon the range. The citizens in Eastern Montana have been exposed to these depredations since the removal of

the Cheyennes to Montana. Soon after the killing of Mr. Ferguson I dispatched Colonel C. D. Curtis, aid de camp N. G. M. to the scene of the trouble with instructions to investigate the cause of the same. A copy of his report is enclosed herewith.

I endorse the same as a report of a careful, competent and conscientious officer, who had ample facilities to ascertain the facts. I do not hesitate to say that the primary cause of the unrest and threatening attitude of these Indians is the result of a failure of the government to properly feed them. These Indians cannot subsist on the meagre allowance doled out to them by the government. Such a course is a constant temptation to plunder, and then if unhappily detected, to kill the witness and thus remove the evidence against them.

I have the honor to submit, first, that these Indians do not, in fairness, belong to Montana, and ought to be removed.

Second, that if permitted to remain here they should be properly fed and kept upon the reservation and disarmed.

I very much fear that a recurrence of such trouble as detailed in Col. Curtis' report, to which I ask your attention, will make it impossible to restrain the settlers in that remote section of the State from taking matters into their own hands.

I have the honor to be your obedient servant,

Jos. K. Toole,
Governor.

The conclusions reached in this letter are as true to-day as they were then. The continued disregard of our urgent but respectful protest manifests such a lamentable lack of interest in our protection that I trust you may find it expedient to give public expression to our affront by a proper memorial to congress.

SALE, RENTAL AND DISTRIBUTION OF WATER.

One of the most salutary provisions in our declaration of rights is that which makes all the water now appropriated or which may hereafter be appropriated for sale, rental, distribution or other beneficial purposes, a public use. Under this provision I assume that you are invested with ample authority to provide by appropriate legislation, against excessive and extortionate charges by individuals, companies or corporations engaged in the sale, rental or distribution of water, and to prevent the unjust discrimination in the disposition of the same to the public. In my opinion the right of the State to regulate this subject should be asserted and maintained. I accordingly invite your attention to this matter as one worthy of your early consideration.

HOMESTEAD AND EXEMPTION.

Homestead and exemption laws are the outgrowth of our civilization, and in all enlightened communities there is a universal concurrence of sentiment in favor of making them broad and liberal. Society owes something to the wife and children and the creditor who trusts the reckless and improvident, ought not to be permitted to pursue the former to destitution. I therefore recommend that in obedience to the Constitution, liberal homestead and exemption laws be enacted.

PRINTING

Provision should be made for carrying out Section 30, Art. 5, of the Constitution respecting public printing.

SEC. 30—All stationery, printing, paper, fuel and light used in the legislative and other departments of government shall be furnished and the printing and binding and distribution of the laws, journals and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislative assembly and its committees shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as may be prescribed by law. No member or officer of any department of the government shall be in any way interested in any such contract; and all such contracts shall be subject to the approval of the governor and the State treasurer.

The present contract with the Journal Publishing Company, entered into under the territorial law, and which was continued in force by the constitution, expires on the 11th day of March, 1891.

THE SUPREME COURT.

Under the provisions of Section 3, Article 8 of the Constitution, the Supreme Court is empowered to summon a jury when required to determine an issue of fact. It will be necessary for the Legislature to prescribe by law the manner in which such jury shall be summoned. There is no statute which governs this contingency.

Under the provisions of Section 4, of the same article, the Legislative Assembly should fix the time for holding the terms of the Supreme Court, or confer the authority upon the justices to regulate them. I think the number of terms should be increased to four, and that the Legislative Assembly should designate them. This legislation would secure a speedy hearing of the appeals and render certain the day when they could be heard.

CLERK OF THE SUPREME COURT.

The Constitution has deemed the office of the Clerk of the Supreme Court of such importance that it has required him to be elected by the people of the State. The fees allowed for his services should be revised, and when collected should be paid into the Treasury. This officer should receive a salary.

DISTRICT COURTS.

Since our admission into the Union we have been working under an entirely new judicial system. In the main it has proven satisfactory, and with some slight modifications and legislation which was designed in the first instance to give it effect, I am confident that it will meet every requirement demanded by the public.

Hon. W. W. Dixon, the Chairman of the Judiciary Committee of the late Constitutional Convention, has so succinctly reviewed the system in a recent address before the Society of the Framers of the Constitution that I submit an extract therefrom. Among other things he said:

"In the counties of Lewis and Clarke and Silver Bow the old courts were so much behind in the trial of causes when the present judges took their seats, and business has since so increased that the new courts have been unable to afford litigants in civil cases the prompt trials which they should have.

"The judges have worked very industriously, but can make little progress. In each of these counties an additional judge is needed, at least for one or two years to come, and the Legislative Assembly should so provide.

In those districts where several counties are united the system seems generally to work satisfactorily. Some of these counties, however, have so increased in population and business that they desire and are entitled to be made separate districts, and this, I think, should be done as speedily as may be. It is to be hoped that in a few years each county in the State will be a district with its own judge. When this is done all the benefits of the judicial system established by the Constitution will be realized.

"One trouble and inconvenience I have heard mentioned in the counties joined with others in one district, is the delay in procuring orders in probate matters when the judge is absent from the county where the order is desired. This, I think, might be remedied to a considerable extent by an amendment to the probate practice act, authorizing the clerk of the court to make in the absence of the judge, such orders as are usually made exparte.

"Sec. 8, Art. 3, of the Constitution provides for the prosecution of criminal offenses in the district court by information, and also by indictment by a grand jury, when the court considers it necessary to summon one, and a grand jury is to consist of seven persons only, of whom five must concur to find an indictment.

"Owing to the unfortunate political complications of last winter, which deprived us of much needed legislation to make constitutional provisions effective, we have no law defining or providing for information. The Supreme Court has therefore held, and no doubt correctly, that criminel cases must still be prosecuted by indictment. We have not therefore enjoyed the benefits of the provision which dispenses in most cases with a grand jury, but we have reduced the number comprising it to seven. This has reduced the expense of the counties and I think has been found satisfactory to the people. The constitutional provision that in case of misdemeanor and in all civil actions two-thirds in number of the jury may render a verdict has, so far as I have seen or been informed, been found to be very satisfactory in its practical operation and has greatly facilitated the decision of cases and prevented expense and unnecessary new trials."

By promptly providing for proceeding by information heavy bills of cost will be saved which now necessarily obtain. If witnesses are compelled to attend at preliminary examinations, before the grand jury and then upon the trial, three separate bills of cost are incurred when one ought to answer the purpose, besides the witnesses are frequently of a migratory character, cannot be found, or if so, at heavy expense on account of mileage.

The necessity of another judge in Lewis and Clarke and Silver Bow counties is apparent to every one who has considered the subject. A letter addressed to this office from Hon. W. H. Hunt, Judge of the first Judicial District Court, giving a statement of the volume of business transacted in his district and the immediate demand for relief, is clear, concise and convincing. The same is appended hereto and marked "Exhibit D." I may add that the reasons given by Judge Hunt are equally applicable to Silver Bow county, and that the same would have been made manifest by the judge of that district but for his unavoidable absence at this time.

CODE COMMISSION.

The important work of preparing the four codes authorized by the act of March 14, 1889, was committed to a commission which was required to report three of the codes to the next ensuing Legislature. The commission has been industriously en-

gaged in the work since the adoption of the State Constitution, and has completed and filed with the Secretary of State the "civil code," "the code of civil procedure" and "penal code." I am in receipt of a communication from the Chairman of the Commission under date of December 11, 1890, as follows:

"Replying to yours of the 10th I have the honor to report: That the code commission appointed in pursuance of the act of the legislative assembly of March 11, 1889, commenced its labors in April, 1889, and almost continuously since the first day of September of that year, has worked in codifying the laws as provided in the act, and as a result the code commission has completed and filed with the secretary of State a "Civil Code," a "Code of Civil Procedure," a "Penal Code," and is now at work upon a "Political Code," which, it is expected, will be completed by the 15th day of January, 1891.

"The making of the political code is a great task and ought to have been completed before the making of the other codes, but this could not be done and comply with the act creating the commission. Much labor has been spent upon the political code in making our laws, offices, official duties, and State and county governments generally conform to the requirements of the Constitution. The commission might profitably have spent every day since the passage of the act creating it, upon the political code.

"We have felt hurried with our work on account of the limited time given for its completion. In other States from three to five years have been occupied by commissioners in codifying each subdivision of their laws, and we would be much better satisfied with our work if we had more time to bestow upon it.

"Before the codes, already filed, are finally submitted a few changes will have to be made in consequence of some of the provisions of the political code, but we hope to have all the codes ready by the 15th day of January next.

"To make each code complete and harmonious with itself, and with each of the other codes, and at the same time embody and perfect the provisions of our territorial statutes and make them conform to the Constitution, has required a vast amount of patience and labor and two years further time might well be spent in the work."

These codes will embrace the whole body of the statute law of the State except such additions as may be made at this session. The greatest possible care and investigation will of course be necessary in order to preserve harmony between their several parts and consistency between the whole and the Constitution. While the gentlemen composing the commission are learned in the law and are in every way qualified for such distinguished and important service, nothing effecting the character of their work

should be taken by implication on that account. The responsibility for the work will rest jointly upon us and the commission. The act creating the commission contemplated that five hundred copies of the several codes should be printed and placed in the hands of the State librarian, judges of the Supreme and District courts and other State officers and members of the bar of the State in order that the work might be intelligently examined and criticised before the assembling of the Legislature. There does not seem to have been any appropriation available for this purpose, at all events none were published. It will not be unwise to consider in the outset whether it will not be more prudent to first provide for the printing contemplated by the act creating the commission and then confine your labors to the enactment of such legislation as is necessary to carry out constitutional provisions and the settlement of outstanding claims against this State, leaving the code to be considered by the next session of the Legislature. Indeed, this may be necessary, as the constitution requires that every bill shall be printed before its passage.

This is an important question and worthy of your consideration.

PUBLIC SCHOOLS.

There is abundant evidence to show that our public school system has improved steadily from year to year. It is the great popular institution of the State and deserves well of the legislative assembly. Reliable statistics show the following interesting facts: There are about 30,000 school children in the State. About 600 teachers are employed at an average of about $56 per month. One million dollars is invested in school property. This includes 349 school houses, but excludes private schools. At the close of the school year, Aug. 31, 1889, the several counties had on hand $64,761.78. Total amount received for school purposes from taxation and other sources for 1889, $569,521.91.

Paid teachers	$215,578 02
Paid for school apparatus	6,807 16
Paid for library	276 87
Paid for school houses, sites, etc	88,643 50
Paid other expenses	32,079 57
Balance on hand Aug. 31st, 1890	244,119 97

During the year forty-seven school districts observed Arbor Day and 250 trees were planted. The compulsory clause of the school law has not been generally observed, but no prosecutions have been instituted under it.

FEES OF COUNTY OFFICERS.

Your attention is directed to the present fee bill of the respective county officers. The complaint is universal that the fees under the territorial laws, and which are now injected into the

State statutes, are unreasonable and excessive. While all officers should have a fair and just compensation, and ought to be consulted in the establishment of fees, the citizen ought not to be compelled to surrender entirely to their demands. I recommend, therefore, a complete revision and adjustment of the present law fixing the fees of county officers so as to make them approximately commensurate with the services rendered, and that all fees when collected be paid into the respective county treasuries, and that in lieu thereof, salaries be paid to such officers.

I feel confident that this will withdraw the temptation to be over zealous, ostensibly for the public good, but in reality not infrequently for their own aggrandizement. At all events it is worth the experiment, but in my judgment it should not take effect until January, A. D. 1893.

CORPORATIONS.

The organization of corporations to carry on large enterprises has become a necessity in this and other states; the development of our resources and the carrying forward of projects for the public good in many instances are of such magnitude and require the outlay of such large sums of money that private capital cannot be induced to embark in them. The law should provide for the incorporation of uch, but I condemn as bad legislation the existing statute, inherited from the territory which permits almost every character of business and industry to become the subject of an incorporation, whereby the liability of the stockholders is limited. No one but a creditor is entitled to see the books of the corporation and hence a person dealing with such concern in the first instance is at a disadvantage. I recommend the modification of existing laws so that corporations may be formed for the following and such other purposes as may be considered proper, and which shall be specifically provided for, and no other:

1—The support of public worship.

2—The support of any benevolent, charitable, educational or missionary undertaking.

3—The support of any literary or scientific undertaking, the maintenance of a library or the promotion of painting, music or other fine arts.

4—The encouragement of agriculture or horticulture.

5—The maintenance of a club for social enjoyment.

6—The maintenance of public parks, and the facilities for skating and other innocent sports.

7—The maintenance of a public or private cemetery.

8—The prevention and punishment of theft or wilful injury to property and insurance against such risks.

9—The insurance of human life and dealing in annuities.

10—The insurance of human beings against sickness or personal injuries.

11—The insurance of lives of domestic animals.

12—The insurance of property against marine risks.

13—The insurance of property against loss or injury by fire or by any risk of inland transportation.

14—The transacting of a banking business.

15—The construction and maintenance of a railway and of a telegraph line in connection therewith.

16—The construction and maintenance of any other species of roads, and of bridges in connection therewith.

17—The construction and maintenance of a bridge.

18—The construction and maintenance of a telegraph line.

19—The establishment and maintenance of a stage line.

20 —The establishment and maintenance of a ferry.

21—The building and navigation of steamboats, and carriage of persons and property thereon.

22—The supply of water to the public.

23—The manufacture and supply of gas, or the supply of any motive power, light or heat to the public.

24—The transaction of any manufacturing, mining, mechanical or chemical business.

25—The transaction of a printing or publishing business.

26—The establishment and maintenance of a hotel.

27—The erection of buildings and accumulation and loan of funds for the purchase of real property.

28—The improvement of the breed of domestic animals by importation, sale or otherwise, or

29—The construction of canals and reservoirs for conveying and storing water and the boring of artesian wells.

REGISTRATION.

The Constitution gives the legislature power to enact suitable registration laws. The schedule annexed to the Constitution provides for continuing in force all laws of the Territory not inconsistent with the Constitution, or the Constitution and laws of the United States. By this the registration law enacted by the last territorial legislature becomes a part of our State statutes. While the legislature ought to throw around the ballot every safeguard against fraud and repeating, and a proper registration law is conducive to this end, the present system overshoots the mark and operates to disfranchise many good citizens of this State whose votes are entitled to be cast and counted. In

my opinion no registration should be required as a condition precedent to voting in remote and sparely settled communities. The facilities for transportation are inadequate in such sections of the country, and those afforded are expensive and often beyond the means of the voters. Mountain ranges are sometimes required to be crossed and the distance required to be traveled has been shown to be, in some instances, as much as a hundred miles, and not unfrequently from twelve to twenty miles. The result of this is that the ranchman, the stock-herder and the prospector, who form a large per cent of our population, and who are generally impecunious and unable to bear the burden of such an expense and loss of time as the present system necessarily entails, are compelled to remain at home and are thereby disfranchised on election day. To obviate this wrong done to the citizen, I recommend that the present registration law be so amended that registration shall not be required except in incorporated cities and towns having a given population. It is in the latter places, the centers of population, where lawbreakers and malefactors congregate that repeating and fraud are practiced, and not in remote precincts where every man knows his neighbor and a stranger is at once observed. I believe that it is an undue and unnecessary burden on the citizen to require him to register every time there is a general election. Having once registered that ought to be sufficient for at least six years.

Provision should be made whereby the elector who has once registered and removed will not lose the right of suffrage.

Aside from this the law is unreasonable and probably would be declared void upon a proceeding involving its consideration in the courts. First, because it undertakes to disfranchise a large number of voters through no fault of their own, to wit: Those who are ill and unable to attend before registration officers, but who are able to attend upon election day. Second, because it makes an unjust and unlawful distinction between the rights of native born and naturalized citizens and electors, to wit: It requires a naturalized voter to produce his certificate of naturalization or show by evidence other than his own oath that such certificate was issued, while it permits a native born citizen to prove his standing as a voter by his own oath. Third, it destroys the right of suffrage of those citizens whose qualifications as respects residence would mature between the 15th day of October and election day, the registration board having adjourned on October 15. The constitution authorizes the Legislature to enact "registration and such other laws as may be necessary to secure the purity of elections and guard against abuses of the elective franchise," but this does not authorize by direction or by indi-

rection the disfranchisement, without his own fault or negligence, any elector under the constitution.

Section 2, article 10, of the Constitution, makes the term of residence apply to a time immediately "preceding the election," so that in order to give the citizens the right of suffrage guaranteed by the Constitution he should be permitted to register on the day preceding the election. These questions were considered at length in the case of the Attorney General vs. the City of Detroit, and decided by the Supreme Court of Michigan on December 28, 1889, and reported in Vol. 41, No. 13, of the Albany Law Journal, from which I make the following extract:

Why should a person claiming to be an elector by naturalization be debarred, if he has lost his certificate, from establishing such fact by his own oath? A person may swear that he is native born, and he is not required also to prove this fact by some one else, before he can be registered; but if he wishes to show that he is an elector by naturalization, he is presumed to be unable himself to tell the truth under oath, and must be corroborated by some one else. The easiest way for a person of this class wishing to cast a fraudulent vote, would simply be to swear that he was born in the United States, and in such a case a perjurer is put to less trouble to get on the registry list than an honest man who desires to show that he has been naturalized, but who, unfortunately, has lost the record evidence of such naturalization. This distinction between native born and naturalized electors is an unfair one, and, as above shown, entirely unnecessary in order to prevent fraud. Its tendency will be to disfranchise honest men and to induce dishonest men to perjure themseles. Section 13, in reference to removals from one precinct to another and the necessary steps to become registered in such cases, seems to me most unreasonable and unnecessary; but perhaps this is within the power of the Legislature, as it is not absolutely impossible to comply with it. But in relation to naturalized voters, the very men who have probably lost their certificates and cannot now replace them are elderly men, who have been naturalized for many years, and have exercised the elective franchise in Detroit without question for upwards of a quarter of a century. They have, many of them, no doubt forgotten the particular name of the court in which they took out their papers; and to prove their issue by some one other than themselves would be, in some instances, impossible. A law that treats these men as men whose oaths cannot be taken in their own interest, while it permits a native born citizen to prove his standing as a voter by his own testimony cannot receive my sanction, as I believe such a requirement not only to be unjust and unfair, but unconstitutional, unless applied

to all. Another distinction may also be noted. A native born citizen becoming of age between the last day of registration and the election, is permitted to vote; but a foreign born citizen, who has taken out his first papers, and whose right to full citizenship or the elective franchise, will ripen between the completion of the registry list and the opening of the polls, can not vote.

In my opinion no registry law is valid which deprives an elector of his constitutional right to vote by any regulation with which it is impossible for him to comply. No elector can lose his right to vote, the highest exercise of a freeman's will except by his own fault or negligence. If the legislature, under the pretext of regulation, can destroy this constitutional right by annexing an additional qualification as to the number of days such voter must reside within a precinct before he can vote therein or any other requisite, in direct opposition to any of the constitutional requirements, then it can as well require of the elector entirely new qualifications, independent of the Constitution, before the right of suffrage can be exercised. If the exigencies of the times are such, which I do not believe that a fair and honest election cannot be held in the city of Detroit, or in any other place in our State, without other qualifications and restrictions upon both native born and naturalized citizens than those found in and authorized by the Constitution, then the remedy is with the people to alter such Constitution by the lawful methods pointed out by that instrument.

I therefore recommend such modifications of existing laws as will remedy the evils pointed out.

PURITY OF THE BALLOT.

The last territorial Legislature inaugurated a ballot reform that is worthy of note. While the Australian system of voting as a whole does not come up to the public expectation, it is nevertheless a departure in the right direction and its general acceptance by the people with some modifications, in my opinion, is assured. There should be no abatement of public interest in legislation designed to secure and perpetuate the purity of the ballot. The present law would be just as effective as it was designed to be if instead of printing the names of all the candidates on one continuous ticket, their names should be on separate tickets representing the party whose political principles they avowed, or upon the same ticket in separate columns. I recommend this modification of the law. The present system is tantamount to an educational qualification on the one hand, or a complete surrender upon the other to judges of election, who, in many cases,

are incompetent, and in some cases venal. The time is too short to point out the many imperfections of a law, which was well intended, but which to the most casual observer in the light of observation and actual experience has been demonstrated to be very crude. If this system can be simplified and at the same time preserve its essential qualities, in my opinion, it will popularize politics and in the end secure the most perfect reflection of the popular will of any system ever inaugurated. It stimulates courage in the dependent to vote according to his conscientious convictions, and above all, it strikes savagely at the method of machine politics and promises its complete annihilation. In other words, simplified and properly guarded, it secures to the voter the largest freedom of thought and independence of action and exercise of judgment of any system which has ever obtained to my knowledge. So certain am I of the salutary effect of this system that I venture the prediction it will never be abandoned until the state is ready to abandon its sovereignty.

If our institutions are to endure, and the honor, integrity and prosperity of the State are to continue to be the hope and anchor of the citizen, the vote of the people expressed at the polls without hindrance or intimidation must be sedulously guarded and maintained at all hazards. The duties of the officers charged with the responsibility of declaring the result of an election should be made so explicit and the punishment for misconduct made so severe that the temptation for venal treachery at vital points will be forever removed. I call your attention to the unusual and unnecessary expense in the matter of printing which the present election law entails upon the people. It should be framed to meet only necessary and proper expenses.

PRESIDENTIAL ELECTORS.

Before another legislature shall have assembled an election for president and vice-president of the United States will occur. Provision should therefore be made as contemplated by the United States statutes upon this subject and for canvassing the votes, declaring the result and so forth.

NOTARIES PUBLIC.

Under the law there is no limitation upon the number of notaries permitted to be appointed. The convenience which such an officer has been found to be, especially in remote and sparsely settled communities, has led me to appoint such in every case where the applicant possessed the necessary qualifications. There have been 369 notaries appointed and commissioned since the 8th day of November, A. D. 1889. Not a single case of mal-

feasance or misconduct in office has come under my observation or been brought to my attention.

REWARDS.

Under Territorial law the Governor was authorized to offer rewards for the apprehension of persons charged or convicted of crimes, in his discretion, in amount not exceeding one thousand dollars. No rewards have been offered during my term of office.

Two rewards aggregating one thousand dollars were offered by Governor White, late Governor of the Territory, for the apprehension of two Indians charged with murder. The Indians were apprehended as claimed by the Sheriff of Missoula county, the county in which the crimes were committed. They have since been convicted, and the Sheriff of that county claims the reward.

Public policy, however, it seems, is opposed to paying a reward to an officer for doing an act which, by law, it is his duty to perform; and I have been constrained to withhold the approval of this account. I also call your attention to the fact that the existing law seems to appropriate money for a reward in arresting a prisoner, bnt no appropriation is expressly made for the payment of a reward for the apprehension of a person not a "prisoner." In other words an escape seems to be necessary before the appropriation is available.

PROTECTION OF RANGES AND TIMBER FROM FIRE.

Section 3, article 19, of the constitution is as follows:

SECTION 3—The legislative assembly shall enact suitable laws to prevent the destruction by fire from any cause of the grasses and forests upon lands of the State or upon lands of the public domain, the control of which may be conferred by Congress upon this State and to otherwise protect the same.

In this State, where so much is made to depend upon the preservation of the ranges, every possible protection and safeguard consistent with property rights and a full enjoyment of the same should be invoked to prevent prairie fires, there ought to be a community of interest in this behalf. I am of the opinion that nothing could be done more conductive to this end than the passage of a law by which railroad companies operating in the state should be compelled to burn their right of way annually and thus prevent a spread of fire originating not infrequently from sparks from their engines and the cleaning of fire boxes.

LOTTERY AND GIFT ENTERPRISES.

Section 2, Article 19, of the Constitution is as follows: "Section 2—The Legislative Assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this State." This legislation should be enacted and penalties prescribed. A question has arisen whether existing laws apply to the sale of lottery tickets in any lottery or drawing to take place outside of the State. It should be made specific. The Supreme Court of the United States, speaking of the demoralizing effects of such concerns, says:

"Experience has shown that the common forms of gambling are comparatively inocuous when placed in contrast with the wide-spread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community. It enters every dwelling; it reaches every class; it preys upon the earnings of the poor; it plunders the ignorant and the simple."

Our legislation on the subject should be so comprehensive and the penalties so severe as to close forever every avenue of approach to this insidious and demoralizing foe to society.

TO PROMOTE UNIFORMITY OF LAWS.

A commendable effort is being put forth by the American Bar Association, seconded by a number of the states, to secure uniformity of legislation throughout the United States, especially with regard to marriage and divorce, wills, descent and distribution of property, form of deeds, acknowledgments and kindred topics.

There are but two modes of securing this end. First, an amendment to the Federal Constitution. Second, uniform action by the states. The first method is not feasible or practicable. Your attention is invited to the second method, voluntary action by the several states. The legislature of the State of New York has taken the initiative in this matter and has passed the following law:

Section 1—Within thirty days after the passage of this act, the governor shall appoint by and with the consent of the Senate, three commissioners, who are her by constituted a board of commissioners by the name and style of "commissioner's for the promotion of uniformity of legislation in the United States." It shall be the duty of said board to examine the subject of marriage and divorce, insolvency, the form of notarial certificates and other subjects; to ascertain the best means to effect an assimilation and uniformity in the laws of the States, and

especially to consider whether it would be wise and practicable for the State of New York to invite the other States of the Union to send representatives to a convention to draft uniform laws to be submitted for the approval and adoption of the several States and to devise and recommend such other course of action as shall best accomplish the purpose of this act."

Such anomolies as sometimes arise under the laws of the different States respecting the subjects referred to ought not to exist. It is recommended therefore that action be taken looking to our co-operation in some plan to promote this very desirable end.

EXPENSES OF CONSTITUTIONAL CONVENTION.

The $20,000 appropriated by congress to defray the expenses of holding the late constitutional convention was found to be inadequate for that purpose. Additional clerk hire and other officers, including a stenographer, and a stenographic report of the proceedings of the convention, was by resolution of the convention declared to be necessary and proper for the convenient and early dispatch of business. To cover these extra expenses the convention adopted an ordinance appropriating the following sums for the following purposes respectively, and declared the same to be charges against the State of Montana. The item for the stenographic report is an approximation but of course is capable of being rendered certain when the report is filed.

John Trumbull, clerk	$ 220 00
E. C. Garlet, clerk	215 00
John McKay, clerk	220 00
Lee Swords, clerk	215 00
Edward Kerr, clerk	215 00
Henry Bernard, clerk	215 00
Miss Jennie Merriman, clerk	160 00
William Taylor, clerk	55 00
William Green, asst. sergt. at arms	175 00
Morris Langhorne, page	172 00
Cornelius Hedges, page	172 00
Wm. D. Alexander, page	172 00
Henry Bernard, for supervising the printing of the constitution and typewriting	100 00
Lee Swords, for acting as clerk to the committee on address	25 00
C. P. Connolly, stenographer	675 00
C. P. Connolly, transcript of proceedings and debates of constitutional convention (estimated)	1,800 00
Printing 20,000 copies of the constitution (estimated)	2,100 00
Total	$6,906 00

I, therefore, recommend that the same be paid by the State and that Congress be memoralized to reimburse the State as it intended by its enabling act to cover all expenses of the conven-

tion. Inasmuch as this ordinance was not submitted to the people for ratification and by them ratified, legislation is required to give it effect. Similar deficiencies growing out of the admission of North and South Dakota and Washington were allowed by the last Congress, but owing to some imperfection of our proofs or otherwise Montana's claim was omitted.

CONSTITUTIONAL AMENDMENTS.

Conscious of the fact that the Constitutional Convention, which formulated and adopted our Constitution, committed a grievous mistake in providing for the apportionment and representation of Senators by which population, the only just basis of representation under our form of government was wholly ignored, I call upon the Legislative Assembly at the first opportunity to provide for the early submission of a constitutional amendment whereby this inequality may be speedily corrected.

THE WORLD'S COLUMBIAN EXPOSITION.

The propriety of taking such steps as may be necessary to enable Montana to be creditably represented at the World's Columbian Exposition, to be held at Chicago in 1893, by virtue of an act of Congress approved April 25, 1890, will be for your determination. I have every reason to believe that this exposition will be the crowning glory of the nineteenth century, and that no better opportunity will ever be offered of placing before the world in an attractive form the great and varied resources and illimitable possibilites of our young State than that furnished at this great exposition.

I would be glad to let the world know with what prodigality nature has endowed us and call attention to the splendid field which our State offers for intelligent exploration and development. Every phase of our great wealth-producing resources should be made manifest and fully exemplified, including a practical application of the principles of irrigation so simple and yet so little understood and appreciated.

Under the act creating the commission, A. H. Mitchell, of Deer Lodge county, and L. H. Hershfield, of Lewis and Clarke county, were appointed by the president of the United States as commissioners to represent the State of Montana upon said commission. T. E. Collins, of Cascade, county and Benjamin F. White, of Beaverhead county, were appointed their alternates.

Mrs. Lily Rosecrans Toole, of Lewis and Clarke county, and Mrs. H. Knippenberg, of Beaverhead county, were by the president of the commission, upon the recommendation of the commissioners of this state, appointed upon the board of lady managers. Mrs. Marian D. Cooper, of Gallatin county, and Mrs.

F. I. Worden, of Missoula county, their alternates. Montana was complimented by the appointment of Mrs. Mary S. Harrison, of Montana, as a lady manager at large; and also the only vice-president at large; thus making our State one of the eight with a representation of three lady managers on the board.

I favor as large an appropriation by the State as is consistent with our resources and permissable under the Constitution. The views of the commissioners will be presented to you hereafter touching not only the amount required but the general scope and plan of action.

ADMISSION DAY.

I recommend that the 8th day of November, the day of our admission into the Union, be declared a legal holiday.

GREAT SEAL OF THE STATE.

A State Seal should be adopted as well as seals for the several courts and commissions.

The time in which you are limited to do the work of the session is scarcely adequate, but much can be accomplished. Concerning the foregoing recommendations and all other proper subjects of legislation, you may rely upon my cordial co-operation.

Jos. K. Toole, Governor.

Executive Office, Helena, Mont., Jan. 5, A. D. 1891.

EXHIBIT A.

STATEMENT SHOWING ASSESSMENTS OF COUNTIES FOR 1889 AND 1890, WITH INCREASE OR DECREASE IN 1889 OVER 1890.

COUNTIES.	1889.	1890.	Increase.	Decrease.
Beaverhead	$ 3,128,078	$ 3,013,172	$.....	$ 114,906
Choteau	4,155,281	4,950,217	794,936	.....
Custer	4,465,411	6,380,177	1,919,766	.....
Cascade	4,311,690	8,646,548	4,334,858	.....
Dawson	1,742,887	2,406,681	663,794	.....
Deer Lodge	7,826,645	9,900,491	2,073,846	.....
Fergus	2,985,851	3,299,475	313,624	.....
Gallatin	4,320,570	4,643,119	322,549	.....
Jefferson	3,167,714	3,919,400	751,686	.....
Lewis and Clarke	15,437,096	26,708,717	11,271,621	.....
Madison	2,752,651	3,035,456	281,805	.....
Meagher	2,866,802	4,043,437	1,136,635	.....
Missoula	4,982,716	8,113,188	3,130,472	.....
Park	3,062,900	4,492,436	1,429,536	.....
Silver Bow	11,368,572	16,208,833	4,840,261	.....
Yellowstone	2,852,080	3,217,037	414,957	.....
Totals	$79,376,944	$112,373,384	$33,675,346	$ 114,906

EXHIBIT B.

STATEMENT SHOWING NET INDEBTEDNESS OF THE SEVERAL COUNTIES MARCH 1, 1890, AND INCREASE AND DECREASE FOR THE YEAR ENDING FEBRUARY 28, 1890.

COUNTIES.	Indebtedness Mar. 1, 1889.	Indebtedness Mar. 1, 1890.	Increase.	Decrease.
Beaverhead	$ 37,869 22	$ 76,303 08	$ 38,433 86	$ .....
Choteau	124,562 27	124,294 05	.....	268 22
Custer	245,733 83	260,979 50	15,245 97	.....
Cascade	69,801 06	53,019 22	.....	16,781 84
Dawson	132,671 47	125,181 96	.....	7,489 51
Deer Lodge	106,947 31	139,676 15	32,728 84	.....
Fergus	19,239 97	18,295 30	.....	944 67
Gallatin	65,717 90	57,591 55	.....	8,126 35
Jefferson	121,464 22	154,549 35	33,085 13	.....
Lewis and Clarke	163,167 44	125,679 15	.....	37,488 29
Madison	.....	87,229 00	.....	.....
Meagher	55,318 26	81,076 13	25,757 87	.....
Missoula	165,762 46	223,839 73	58,077 27	.....
Park	55,674 68	64,379 18	8,704 50	.....
Silver Bow	125,000 00	77,281 11	.....	47,718 89
Yellowstone	120,392 87	125,649 18	4,256 31	.....
Totals	$1,609,322 66	$1,794,023 64	$216,289 75	$118,817 77

EXHIBIT C.

STATEMENT SHOWING THE CONDITION OF THE SEVERAL FUNDS AND THE AMOUNT CONTRIBUTED TO EACH BY THE RESPECTIVE COUNTIES.

COUNTIES.	General Fund.	Stock Inspection.	Stock Indemnity.	Sheep Inspection.	Auditor.	Secretary of State.	Boiler Inspection.	Escheats.	Totals.
Beaverhead	$ 7,131 80	$ 464 35	$ 63 97	$	$	$	$	$	$ 7,660 12
Choteau	17,633 63	592 83		86 28					18,312 74
Custer	9,097 35	1,923 79	625 44	103 68					11,750 26
Cascade	8,678 21	2,811 05	922 11	48 84					12,460 21
Dawson	1,985 27	187 94	62 31	72 06					2,307 58
Deer Lodge	33,749 89	753 49	252 00					601 88	35,357 26
Fergus	8,140 05	1,951 69	620 37	985 82				747 21	12,445 14
Gallatin	11,406 04		66 23	48 27					11,520 54
Jefferson	9,768 29	915 71	292 44	32 85					11,009 29
Lewis and Clarke	48,996 31	466 85	157 01	5 04	2,580 40	2,315 50			54,521 11
Madison	7,690 98	1,215 48	363 95					1,435 34	10,705 75
Meagher	8,391 51	1,128 15	398 82	598 06					10,516 54
Missoula	17,861 87		178 62					21,619 20	39,659 69
Park	11,391 67	4 56	54 28						11,450 51
Silver Bow	47,459 63	16 98	73 23	31			3,897 00		51,447 15
Yellowstone	6,181 80	928 61	58 62	272 31					7,441 34
Totals	$255,564 30	$13,361 48	$ 4,189 40	$ 2,253 52	$ 2,580 40	$ 2,315 50	$ 3,897 00	$ 24,403 63	$308,565 23

EXHIBIT D.

AMOUNT OF CLAIMS AGAINST THE STATE. (APPROXIMATED.)

Sheriff's claims for board in county jail		$ 8,727 95
Claims account requisition papers		652 70
Bounty certificates		11,501 00
State prison contractors—		
Prisoners at 70 cents per day	$19,250 00	
Prisoners at 65 cents per day	20,595 90	
		39,845 90
National Guard claims—		
Annual appropriation (company)	$ 6,750 00	
Other claims	7,012 50	
		13,762 50
State board of arbitration		290 40
Claims for printing		6,515 80
Claims for care and maintenance of the insane—		
Amount for maintenance	$69,065 97	
Amount for clothing and cash	1,330 50	
		70,396 47
Claims account of Legislature		2,325 30
Claims for transportation of deaf mutes from institutes to Montana, note given by State officers for amount—		
Amount of note	$ 700 00	
Interest	46 00	
		746 00
Claims on writs of habeas corpus		208 90
Claims for making arrest by warrant from lieutenant governor, (no certificate issued for this claim)		195 00
Rewards		1,000 00
		$156,168 42

EXHIBIT E.

HELENA, Montana, Dec. 23, 1890.

To His Excellency,

JOSEPH K. TOOLE,

Governor of Montana.

DEAR SIR—I have the honor to herewith submit for your consideration a statement of the business transacted by the district court of the first judicial district of the State, from the date of the admission of the State, November 8th, 1889, up to and including the 22d day of December, 1890. Court was regularly opened for business on November 9, 1889, and has continually been in session since that date, except upon holidays and during the month of August when I was out of the State.

I respectfully call your attention to the fact that there has been a steady increase in business for the past three years, and invite your attention to the volume of business which has been transacted during the past thirteen months as well as to the large

number of cases still undisposed of, and which is increasing every day. During the time that I have occupied the bench I have done my utmost to dispose of the old cases which I found upon the calendar when the State was admitted. Many of these cases were important, and consumed much time and disposition.

The experience of the past thirteen months clearly demonstrates, I think, the need of another judge in this district. It is a very severe tax upon one man to hold court each and every day, and give to the important questions that considertion that is due to the propositions of law presented and that a judge feels he should and would like to give. I do not hesitate, therefor, to express to you my earnest hope that you may deem it fit to recommend to the legislature the enactment of a law by which there may be two judges and two departments of our district court.

I have conferred with nearly all the members of the bar and so far as I am able to judge their wish is unanimous for the relief suggested. As to the provisions of the law creating a new judgeship, it is unnecessary for me to make any suggestions, unless called upon to do so. I have the honor, sir. to remain your obedient servant.

WILLIAM H. HUNT,
Judge First Judicial District.

STATEMENT.

Civil cases on docket when State was admitted	501	
New cases since November 8, 1889	721	
Total number of civil cases		1,222
Criminal cases commenced since November 8, 1889	142	
Insane cases tried by juries, pursuant to law, from November 8, 1889	21	
		163
Total number of cases, civil, criminal and insane		1,385

CONTRA.

Civil cases disposed of and finally determined from November 8, 1889	580	
Criminal cases disposed of from November 8, 1889	141	
Insane cases disposed of from November 8, 1889	21	
Total number of cases entirely disposed of from November 8, 1889		742
Cases yet to be disposed of on the docket		643
		1,385

There have been also 71 new estates filed for probate from November 8, 1889.